

(b) Programs in which commercial or non-developmental items can satisfy the military requirement are preferred as candidate programs. A nominated program will address which standard commercial, industrial practices will be used in the pilot program and how those practices will be applied.

(c) Nomination of candidate programs must be accompanied by a list of waivers being requested to Statutes, FAR, DFARS, DoD Directives<sup>4</sup> and Instructions,<sup>5</sup> and where applicable, DoD Component regulations. Waivers being requested must be accompanied by rationale and justification for the waiver. The justification must include:

(1) The provision of law proposed to be waived or limited.

(2) The effects of the provision of law on the acquisition, including specific examples.

(3) The actions taken to ensure that the waiver or limitation will not reduce the efficiency, integrity, and effectiveness of the acquisition process used for the defense acquisition program; and

(4) A discussion of the efficiencies or savings, if any, that will result from the waiver or limitation.

(d) No nominated program shall be accepted until the Under Secretary of Defense has determined that the candidate program is properly planned.

### **PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS**

Sec.

3.1 Purpose.

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**AUTHORITY:** Section 801 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and Section 804 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398).

**SOURCE:** 66 FR 57383, Nov. 15, 2001, unless otherwise noted.

<sup>4</sup>See footnote 3 to §2.4(b).

<sup>5</sup>See footnote 3 to §2.4(b).

#### **3.1 Purpose.**

This part implements section 801 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and section 804 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398). It establishes the requirement for the inclusion of a clause in transactions other than contracts, grants or cooperative agreements for prototype projects awarded under authority of 10 U.S.C. 2371 that provides Comptroller General access to records when payments total an amount in excess of \$5,000,000.

#### **3.2 Applicability.**

This part applies to the Secretary of a Military Department, the Directors of the Defense Agencies, and any other official designated by the Secretary of Defense to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense, under authority of 10 U.S.C. 2371. Such transactions are commonly referred to as "other transaction" agreements and are hereafter referred to as agreements.

#### **3.3 Definitions.**

*Contracting activity.* An element of an agency head and delegated broad authority regarding acquisition functions. It includes elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

*Head of the contracting activity.* The official who has overall responsibility for managing the contracting activity.

#### **3.4 Policy.**

(a) A clause must be included in solicitations and agreements for prototype projects awarded under authority of 10 U.S.C. 2371, that provide for total government payments in excess of \$5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

(b) The clause referenced in paragraph (a) of this section will not apply with respect to a party or entity, or